IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3976 OF 2007
DATE OF DECISION: 15-03-2007

Yogvender Singh son of Sh. Ved Pal Singh, r/o VPO Sehar, Tehsil Loharu, District Bhiwani.

.....PETITIONER

VERSUS

1. The State of Haryana through Commissioner and Secretary to Government Haryana, Education Department, Haryana Civil Secretariat, Chandigarh.
2. The Director, Secondary Education, Haryana, Chandigarh.
3. The District Education Officer, Bhiwani.

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA**
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr. Sumeet Malhotra, Advocate
for the petitioner.

R S MADAN, J.

By filing the present writ petition, the petitioner has claimed his lien on the post of Science Master prior to his joining as Sub-Inspector on 21-12-2004 in the Haryana State Industrial Security Force.

The material facts of the case are that the petitioner secured the appointment to the post of Science Master through the Haryana Staff Selection Commission on 19-3-2002 and joined as Science Master at Government Senior Secondary School Chahar Kalan, Bhiwani on 21-3-2002. It was on 7-8-2004, the State of Haryana advertised the 80 posts of Sub Inspectors of Police in Haryana in the Haryana State Industrial Security Force. In response to the same, the petitioner applied for the said

post. The petitioner was selected and his name was recommended on 2-12-2004 by the Haryana Staff Selection Commission. The petitioner accepted the offer of appointment and accordingly resigned from the post of Science Master on 18-12-2004. The petitioner joined against the post of Sub Inspector on 21-12-2004. On 29-6-2005, the State of Haryana repealed the Haryana State Industrial Security Force Act, 2003 vide the Haryana State Industrial Security Force (repeal) Act, 2005 (Haryana Act No.5 of 2005) and accordingly disband the Haryana State Industrial Security Force Battalions w.e.f. 29-6-2005. On 5-7-2005, the services of the petitioner was accordingly dispensed with by the State of Haryana. The various aggrieved and similar situated candidates challenged the aforesaid order of termination and filed various writ petitions in this Court, which are pending for final disposal. The petitioner also filed CWP No.14626 of 2006 against the order of his termination, which stands admitted and has been ordered to be listed alongwith the Civil Writ Petitions filed by other candidates. The petitioner filed another CWP No.18126 of 2006 before this Court seeking re-instatement against the post of Science Master under respondents. The Hon'ble Bench was pleased to dispose of the same with a liberty to the petitioner to file a detailed representation to the respondents and further directed the respondents to sympathetically decide the same within two months. On 6-12-2006, the petitioner made a representation to the respondents indicating that some of the petitioners, who have been similarly situated persons have been re-instated on the original posts on which they were working prior to their new selection/appointment. Therefore, he is entitled for the post which he had held prior to his joining the post of Sub Inspector in the Haryana State Industrial Security Force. The representation

of the petitioner was rejected on 19-2-2007.

Vide Annexure P8, the matter was considered by the Government and it has been found that as per Rule 3.12 of the Punjab CSR Vol.1 Part 1 a Government employee on subsequent appointment to any permanent post acquires a lien of the post. After resignation if the lien of a person is retained then he cannot come back in the service. However, if there is no lien retained then he cannot be allowed to re-join. In the present case it is clear from the facts that no orders regarding lien were passed and Sh. Yogvender Singh has hardly completed his probation in the Education Department when he resigned from his post. If Sh. Yogvender Singh was not confirmed on the post then after resignation he has no right to the appointed again on the said post. In view of the facts detailed above, the request of Sh.Yogvender Singh for allowing him to join, as Science Master cannot be entertained and his representation is, therefore, rejected accordingly. He is informed.

On behalf of the petitioner, it is contended by the learned counsel that Rule 3.15 Punjab Civil Services Rules Vol.1 Part I is applicable to his case and he is entitled to be re-instatement on the post of Science Teacher, which he was holding prior to his joining as Sub Inspector in the Haryana State Industrial Security Force. Rule 3.15 is reproduced as under:

> *"A Government employee's lien on a post shall, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien on any post."*

Learned counsel further relied upon Annexure P9

CWP No.851 of 1999 titled as **Dharam Pal** Vs. **The State of Haryana and others** where the petitioner, who had served the Government of Haryana for 18 years and thereafter resigned from the post and joined as Taxation Inspector in pursuance of the order issued by the Excise and Taxation Commissioner, Haryana after serving for 4 years and 5 months, his services were terminated in view of the judgment passed by the Supreme Court in **Krishan Yadev and others** Vs. **State of Haryana and others**, AIR 1994 SC 2166. In this case some of the petitioners were re-instated and the case of the petitioner was given a different treatment, therefore, his claim was accepted. This authority, however, is not applicable to the facts of the present case for the reasons that the petitioner was appointed as a Teacher after his case was recommended by the Haryana Staff Selection Commission.

Annexure P1 is the letter through which the petitioner was appointed as a Science Teacher. The relevant terms and conditions are reproduced as under:

> *1. "His/Her appointment is on purely temporary posts which may be abolished at any time and carries no promise of subsequent employment. No offer of permanent vacancy be made to be his/her at present in this respect. His/Her service is legible to be terminated without assigning any reasons by giving one-month notice or salary in lieu thereof.*
> *2. If at any stage he/she desire to resign, he/she will be required to give one month's notice or deposit/forfeit in lieu thereof his/her salary including*

allowances for one month or the period by which the notice falls short of one month. Such a notice will also be given to her/his by the department authority in case it is proposed to terminate his/her service except as a result of disciplinary action or for reasons other than that mentioned in clause I above.

3. No TA/DA will be admissible for joining the post.

4. Before assuming the charge of duty, he/she will be required to take the prescribed oath of allegiance to the Constitution of India and to produce the following certificates:

(i) Medical fitness certificate from the Chief Medical Officer concerned as required under Rule 3.4 of the Punjab Civil Service Rules, Vol.1 Part-1.

(ii) Certificate to the effect that he/she is not married to a person having spouse living or he/she will not contract marriage to a person having a spouse living as the case may be.

(iii) If he/she has not been vaccinated within last twelve months, he/she should have it done reporting before duty.

(iv) Attested copy of Education and Professional qualification and Matriculation certificate.

(v) An affidavit on non-judicial paper duly attested by the Oath Commissioner that while submitting the application for above post, no bogus certificate

regarding qualification, address, experience and age was submitted.

(vi) This order of appointment is without prejudice to the claim for seniority of those persons who have been placed his/her to the above mentioned candidates in the merit list.

5. He/she is put on probation for a period of two years in the first instance from the date he/she take over as Science Master/Mistress in this behalf, besides his/her work and conduct, her results will be particularly taken into consideration while assessing his/her performance, if in the opinion of the appointing authority her work and conduct has not been found satisfactory probation including extension, if any, shall not exceed three years or his/her service will be dispensed with.

6.No application for employment outside the department will be considered before confirmation.

7. His/her appointment is subject to the condition that His/her character and antecedents are certified to be good through the authority concerned. In case subsequently any adverse facts come to the notice of the appointing authority regarding his/her character and antecedents his/her service are legible to be terminated.

8. Any pressure for transfer and specially the unwillingness to serve in the interior

school of rural areas will entitle the department to terminate the service of candidate.

9. It is also made clear that the candidate must assume charge of her appointment within 15 days failing which this offer shall be treated as cancelled.

10. This appointment will further be subject to the final decision in CWP No.2895 of 1994 Anand Parkash Vs. State."

Since the petitioner has himself resigned from the post where he was appointed on temporary basis and one of the conditions was that no application for employment outside the department will be considered before confirmation.

In the light of the fact that the petitioner has himself resigned on 18-12-2004, it is no where pleaded that prior to his resignation he was confirmed employee of the Department rather he was employed on temporary basis and as per condition No.2 since he has resigned from the post, he cannot claim lien on the post as envisaged under Rule 3.15 of the Punjab Civil Services Rules Vol.1 Part I.

In the light of the aforesaid facts and circumstances mentioned above, we do not find any force in the writ petition and the same is hereby dismissed.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

March 15, 2007
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